Calamas Sdn Bhd v Pentadbir Tanah Batang Padang

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 01–3 OF 2008 (A)
RICHARD MALANJUM CJ (SABAH AND SARAWAK), HASHIM YUSOFF AND JAMES FOONG FCJJ
18 APRIL 2011

Land Law — Acquisition of land — Compensation — Whether decision of High Court regarding compensation after hearing land reference was final and non-appealable — Land Acquisition Act 1960 ss 40D(3) & 49(1)

The appellant owned a piece of agricultural land ('the land') a small part of which was compulsorily acquired by the government under the Land Acquisition Act 1960 ('the LAA'). Dissatisfied with the respondent's award of compensation for the acquired portion, the appellant sought a reference of the matter to the High Court. The High Court judge, sitting with two assessors, substantially increased the award but the appellant was still not satisfied and appealed to the Court of Appeal ('COA') contending that comparable sales of agricultural land should not have been taken into account in assessing compensation since the land was approved for subdivision into homestead lots and, therefore, comparable sales of homestead or housing lands should have been the yardstick for assessment. The appellant also contended that the High Court judge's failure to sign the award was a fatal omission under s 47 of the LAA and that the court also erred in not granting the appellant costs under s 51(1)(b) of the LAA when it increased the compensation sum. In the instant appeal, the respondent maintained that the valuations done by the assessors at the High Court were correct and that pursuant to s 40D(3) of the LAA the amount of compensation that was awarded by the High Court was final and non-appealable.

Held, dismissing the appeal with costs:

(1) The appellant's notice of appeal was made pursuant to s 49(1) of the LAA read together with arts 121(2) and 128(3) of the Federal Constitution. The proviso to s 49(1) clearly stated that 'where the decision comprises an award of compensation there shall be no appeal therefrom'. The grounds of judgment of the COA showed that the issue put forward before the court was whether the judge was correct in determining the amount of compensation to the appellant. Most of the points of submission revolved around the amount of compensation, apart from the issue of non-compliance with s 47 of the LAA. But since the appellant had abandoned his ground of appeal relating to s 47, only the issue of

compensation remained. The courts had to give effect to the clear provisions of the law. There was no ambiguity in ss 40D(3) and 49(1) of the LAA. Accordingly, the appellant was precluded from appealing against the order of compensation of the High Court (see paras 15–20).

(2) Although the issue of non-compliance with s 51(1)(b) of the LAA was canvassed before the COA, it did not make any order regarding costs to the appellant. The High Court only gave costs to the assessor. Since no order was made by the High Court on costs to the appellant, this court could only conclude that the judge had deemed it fit to do as he did. There was no reason for this court to interfere with the judge's exercise of discretion regarding costs (see paras 23–24).

[Bahasa Malaysia summary

Perayu memiliki sebidang tanah pertanian ('tanah tersebut') yang sebahagian kecilnya telah diambil secara paksa oleh kerajaan di bawah Akta Pengambilan Tanah 1960 ('APT'). Tidak berpuas hati dengan award pampasan yang diberikan oleh responden untuk bahagian yang diambil, perayu memfailkan rujukan bagi perkara tersebut ke Mahkamah Tinggi. Hakim Mahkamah Tinggi, yang mendengar bersama dua penilai, menambah award tersebut dengan banyak tetapi perayu masih tidak berpuas hati dan merayu ke Mahkamah Rayuan ('MR') dengan berhujah bahawa penjualan tanah pertanian yang sebanding tidak harus diambil kira dalam menilai pampasan memandangkan tanah itu telah diluluskan untuk pecah tanah menjadi lot perumahan dan, oleh itu, penjualan perumahan atau tanah perumahan yang sebanding sepatutnya menjadi ukuran untuk penilaian. Perayu juga berhujah bahawa kegagalan hakim Mahkamah Tinggi untuk menandatangani award tersebut adalah peninggalan yang menjejaskan di bawah s 47 APT dan bahawa mahkamah juga terkhilaf apabila tidak memberikan kos kepada perayu di bawah s 51(1)(b) APT apabila ia menambah jumlah pampasan. Dalam rayuan semasa, responden menegaskan bahawa penilaian yang dilakukan oleh penilai di Mahkamah Tinggi adalah betul dan berdasarkan kepada s 40D(3) APT, jumlah pampasan yang diberikan oleh Mahkamah Tinggi adalah muktamad dan tidak boleh dirayu.

Diputuskan, menolak rayuan dengan kos:

(1) Notis rayuan perayu dibuat menurut s 49(1) APT yang dibaca bersama perkara 121(2) dan 128(3) Perlembagaan Persekutuan. Proviso kepada s 49(1) dengan jelas menyatakan bahawa 'where the decision comprises an award of compensation there shall be no appeal therefrom'. Alasan penghakiman MR menunjukkan bahawa isu yang dikemukakan di hadapan mahkamah adalah sama ada hakim adalah betul dalam menentukan jumlah pampasan kepada perayu. Kebanyakan hujahan merujuk kepada jumlah pampasan, selain daripada isu ketidakpatuhan s 47 APT. Tetapi, memandangkan perayu telah meninggalkan alasan

rayuan yang berkaitan dengan s 47, hanya isu berkaitan pampasan yang masih ada. Mahkamah harus memberikan kesan kepada peruntukan undang-undang yang jelas. Tiada kekaburan dalam ss 40D(3) dan 49(1) APT. Sehubungan itu, perayu dihalang daripada merayu terhadap perintah pampasan yang diberikan oleh Mahkamah Tinggi (lihat perenggan 15–20).

(2) Walaupun isu ketidakpatuhan terhadap s 51(1)(b) APT telah dibangkitkan di MR, ia tidak membuat apa-apa perintah mengenai kos kepada perayu. Mahkamah Tinggi hanya memberi kos kepada penilai. Oleh kerana tiada perintah dibuat oleh Mahkamah Tinggi atas kos kepada perayu, mahkamah ini hanya boleh menyimpulkan bahawa hakim telah menganggapnya patut dilakukan seperti yang dilakukannya. Tidak ada sebab bagi mahkamah ini untuk mengganggu hak budi bicara hakim mengenai kos (lihat perenggan 23–24).]

Notes

For cases on compensation, see 8(2) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 2345–2404.

Legislation referred to

Federal Constitution arts 121(2), 128(3)
Land Acquisition Act 1960 ss 40D, 40D(3), 47, 49(1), 50, 51(1)(b), First Schedule, ss 1(1A), (2BA), 2, 9A, 9A(5)

Amarjeet Singh (Zubeda and Amarjeet with him) for the appellant.
Mohd Hamzah bin Ismail (Perak State Legal Advisor's Office) for the respondent.

Hashim Yusoff FCJ (delivering judgment of the court):

[1] This is an appeal against the decision of the Court of Appeal which had dismissed the appellant's appeal against the High Court decision given on 14 February 2004. We reserved our judgment after hearing this appeal to be given at a later date. We do so now.

FACTS

[2] The brief facts in this appeal as found in the grounds of judgment of the Court of Appeal (pp 13–14 appeal record *Jld* 1) are as follows:

> A portion of the Appellant's land ie 3.744 acres held under title No HS(D) 196, PT No. 2355 Mukim Ulu Bernam Timur district of Batang Padang, Perak ('the scheduled land') was acquired. The said acquisition was made pursuant to Section 8 of the Land Acquisition Act 1960 and gazetted on 6.7.2000.
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> The scheduled land is a freehold land comprising 18.9768 acres and the land use is described and categorised as 'agricultural'.

On 28.10.2000 the Respondent awarded the Appellant compensation for the acquired portion of the scheduled land the sum of RM537,504.00 based on land valuation at the rate of RM352,000.00 per hectare or RM3.40 per square foot.

The Appellant was grieved by and objected to the amount of the compensation. They applied for reference to be made to the Ipoh High Court.

Before the Ipoh High Court, the learned judge sat with two assessors as required under Section 40a (2) of the Act. The Appellant valuer gave evidence. The learned trial judge presided the land reference hearing with the two assessors and on 14.2.2004, the High Court delivered its decision in this manner:

(a) In respect of the land acquired, the court awarded the land value at RM5.50 per square foot, amounting to RM904,174.92, a significant increase over the last award of RM537,504.00.

(b) In respect of the return frontage advantage, the court awarded RM20,000.00.

(c) In respect of the loss of the water tank and the tarmac road, this was disallowed.

(d) The court awarded interest at the rate of 6% per annum from 1.8.2000 until date of payment of the compensation.

(e) The court awarded costs to the private assessor – but made no order as to costs to the Appellant.

The Appellant aggrieved by the High Court decision on 14.2.2000 then lodged a Notice of Appeal dated 10.3.2004.

[3] The main issue raised by learned counsel for the appellant is the inadequacy of quantum. In his written submission, he submitted, inter alia, that 'Firstly it is undisputed evidence that the appellant intended to sub-divide the scheduled land into homestead lots. In the valuation report of the Respondent it is acknowledged that the State director of Town and Country Planning had informed the Land Administration that an application for sub-division of the scheduled land had been made. The Director of Town and Country Planning also stated that the application for sub-division has been approved in principle. the appellant had given evidence that the issue of sub-divided titles was held up by virtue of the present acquisition exercise. The intended sub-divided lots as homestead lots were facing the main Behrang Station — Ulu Behrang Road with water, electricity and telephone lines ready for connection. Therefore, the scheduled land should have been valued by making comparison with homestead lands by applying s 1 para (1A) and s 2 of the First Schedule to the Act of the First Schedule to the Act (see pp 10, 12–13 of ABA). However, the High Court ignored this provision and thereby committed an error in law. the appellant had given evidence of homestead lots found at Lembah Beringin which were valued at RM10.00 per square foot. These Lembah Beringin homestead lots were categorised under agricultural

purposes. Therefore, the scheduled land is similar to the homestead lots at Lembah Beringin'. A

[4] Learned counsel further submitted before us that the High Court had ignored certain provisions under the Land Acquisition Act 1960 ('the Act') in assessing the value of the scheduled land. By the Land Acquisition (Amendment) Act 1997 (Act A999) which came into force on 1 March 1998, the Land Acquisition Act, 1960 has been amended to give clearer provisions for assessing values of lands compulsorily acquired. B

[5] The relevant provisions are s 9A of the Act and s 1 para (2BA) of the First Schedule to the Act, (the First Schedule) which, inter alia, read as follows: C

> 9A Land Administrator to obtain information on land use of schedule land, etc.
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> (1) For the purpose of assessing the amount of compensation under the First Schedule, the Land Administrator shall request from the State Director of Town and Country Planning information on the following matters: D
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> (a) whether the scheduled land is within a local planning authority area;
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> (b) whether the scheduled land is subject to any development plan under the law applicable to it relating to town and country planning; and E
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> (c) if there is a development plan, the land use indicated in the development plan for the scheduled land.
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> ...
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> (5) The information obtained by the Land Administrator under this section *shall be conclusive evidence*, for the purpose of valuing the scheduled land, *with regard to the land use at the date of the acquisition* and shall not be used for any purpose other than for the purposes of this Act. (Emphasis added.) F
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> (see p 2 of ABA for reference to s 9A).
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> (2BA) In assessing the market value of any scheduled land, where the information provided by the State Director of Town and Country Planning or the Commissioner of the City of Kuala Lumpur, as the case may be, under section 9A indicates that the *scheduled land* is within a local planning authority area, then the land *shall be assessed by having regard to the specific land use for the land as indicated int he development plan.* (Emphasis added). G H
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> (see p 11 of ABA).

[6] The interpretation of s 9A when read together with s 1 para (2BA) of the First Schedule by this apex court is significant as it will have great implications on future acquisition cases. It was submitted that by virtue of these provisions, when a land is zoned as housing development land, it has to be assessed as housing development land. Likewise, a land that has later been zoned for green belt, though categorised as commercial in the title, must still be valued based on I

its zoning usage as a green belt on the date of acquisition. The reasons are as follows:

(a) if there is a development plan (local plan), then under the provisions of s 9A(5), the land use indicated in the development plan for the scheduled land shall be conclusive evidence for the purpose of valuing the scheduled land with regard to the land use at the date of the acquisition; and

(b) therefore when the land use is indicated as housing development land (as the scheduled land is), it should be valued as housing development land.

[7] With the enactment of the abovementioned amendment, it is no longer permissible to value the scheduled land according to whether it has housing development potential. If sub-s (5) is meant to say that a land zoned for housing development has development potential, it would have said so. The word 'potential' or any word or phrase indicating a potential is not found anywhere in the provision. To continue valuing compulsorily acquired land (which is zoned for a specific use) based on its potential is to negate the provisions of the aforesaid amendment and render them redundant.

[8] There is no ambiguity in the wordings of s 9A(5) and s 1 para (2BA) to the First Schedule. If a land is zoned for housing development, it has to be valued as a housing development land.

[9] Since the scheduled land was zoned for housing, the comparables used should be housing development lands. The respondent did not give any comparable of a housing development land. The government valuer made comparison only with the sale of agricultural lands along the Behrang Station — Ulu Bernam Road. The appellant, on the other hand, had made comparisons with recent sales of dilapidated low-cost houses in the vicinity. After making necessary adjustments, the appellant valuer concluded that the fair market value for the scheduled land ought to be RM12per sqt.

[10] It was submitted that the Court of Appeal failed to give a proper interpretation of s 9A of the Act and s 1(2BA) of the First Schedule. The Court of Appeal misunderstood these provisions when deciding as it did. The subject land though categorised as agricultural land in the title, should however be valued as a housing land in accordance with the aforesaid provisions.

[11] It was therefore submitted that the scheduled land should be valued as housing land at RM12 per sqft.

[12] Alternatively, the scheduled land should have been valued as homestead land at RM10 per sqft.

[13] The learned assistant state legal advisor for the respondent, however contended that the valuations done by the two assessors ie one from the government and one from the private sector, are correct. He referred to s 40D of the Act which clearly states as follows:

> 40D Decision of the Court on compensation
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> (1) In a case before the Court as to the amount of compensation or as to the amount of any of its items the amount of compensation to be awarded shall be the amount decided upon by the two assessors.
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> (2) Where the assessors have each arrived at a decision which differs from each other then the Judge, having regard to the opinion of each assessor, shall elect to concur with the decision of one of the assessors and the amount of compensation to be awarded shall be the amount decided upon by the assessor.
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> (3) any decision made under this section is final and there shall be no further appeal to a higher Court on the matter.

[14] The learned High Court judge in his grounds of judgment (at pp 52–54 of appeal record I) stated as follows:

> Sub-section (3) of s 40D provides that the decision made by the court is final and non-appealable. When learned counsel for the appellant was notified on this provision, he sought to explain by letter to my secretary dated 5.4.2004 *that this appeal is not against the award of compensation but a non-compliance with legal provisions.* (Emphasis added.) As adverted to earlier the basis of this appeal is non-compliance with ss 9A, 48 and 50 of the Act. With respect, these sections have nothing to do with the proceeding of this Court which had heard an objection made to the Land Administrator's award and had made its decision under s 40D. Vide his letter dated 5.4.2002, *learned counsel now changed his stance and questioned the decision of this Court as not being in compliance with s 47* (Emphasis added.) of the Act, which states that:
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> 47 Award to be in writing
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> (1) Every decision made under this Part shall be in writing signed by the Judge (and the assessors) ...
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> (2) Where such decision comprises an award of compensation it shall specify —
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> (a) the amount award on account of the market value of the land under section 2(a) of the First Schedule;
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> (b) the amount, if any, deducted under section 2(b) of the First Schedule;
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> (c) the amounts, if any, respectively awarded under section 2(c), (d) and (e) of the First Schedule; and
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> (d) in respect of each such amount, the grounds for awarding or deducting the said amounts.

A (3) Every such written decision or award shall be deemed to be a decree and the statement of the grounds of any such award a judgment within the meaning of the law for the time being in force relating to civil procedure.

As earlier stated the decision made by this Court was based on the award of compensation agreed to by both the learned assessors which was made in writing and signed by both of them (see Annexure I). It is however true that as the presiding judge, I had not signed the Annexure. However the full award was recorded in the notes of proceedings and now form part of the records of this hearing. I am of the humble view that my failure to sign Annexure I is not fatal and cannot form a basis for striking down this decision. Further, this was not the basis of the appeal in the notice of appeal but merely raised by the appellant by way of letter dated 5.4.2004.

[15] It is to be noted that the notice of appeal (at p 8 of appeal record I) was done pursuant to s 49(1) of the Act read together with arts 121(2) and 128(3) of the Federal Constitution.

[16] However, the proviso to s 49(1) of the Act clearly states:

Provided that where the decision comprises an award of compensation there shall be no appeal therefrom.

[17] It would appear that from the grounds of judgment of the Court of Appeal (at p 16 appeal record Vol I), the issue put forward before the court was whether the learned judge was correct in determining the *amount of compensation* to be awarded to the appellant. (Emphasis added.)

[18] Most of the points of submission of learned counsel for the appellant before the Court of Appeal also revolved around the amount of compensation, except the issue of non-compliance of s 47 of the Act where the learned High Court judge did not sign award (see Annexure I of appeal record I). It was submitted before the Court of Appeal that the said Annexure I could not therefore constitute a decision and award within the meaning of s 47 of the Act. But before us, learned counsel for the appellant abandoned his ground of appeal in relation to the provision of s 47 of the Act. We are therefore left only with the issue of compensation.

[19] Coming back to s 40D(3) of the Act, I am of the view that the said section clearly stipulates that 'Any decision made under this section is final and there shall be no further appeal to a higher court on the matter'.

[20] It is trite law that courts must give effect to the clear provisions of the law. In the instant appeal I do not see anything ambiguity in ss 40D(3) and 49(1) of the Act. In view of this, I am of the view that the appellant is precluded from appealing against the order of compensation issued by the learned trial judge.

ISSUE ON COSTS

[21] On the issue of costs, learned counsel for the appellant submitted that the learned trial judge in failing to give costs to the appellant, failed to consider the provision of s 51(1)(b) of the Act which provides:

> 51(1)(b) where the amount of the Court award exceed the sum awarded by the Land Administrator, the costs shall ordinarily be paid by the Land Administrator, but if the Court is of opinion that the claim of the applicant was so excessive or that he was so negligent in putting his case before the Land Administrator that some deduction from his costs should be made, or that he should pay a part of the Land Administrator's costs, the Court may make such order as to costs as it may think fit.

[22] The learned assistant state legal advisor however replied that in its notice of appeal to the Court of Appeal (see page 46 of appeal record Vol I) four grounds of appeal were put forward, one of which was the non-compliance of s 50 of the Act. However he submitted that when the appellant's counsel did not amend his notice of appeal, it meant that the appellant had agreed that the costs which were not awarded was the discretion of the court. Further, this issue of costs was never highlighted before the courts below, thus nothing was mentioned by the learned judge on costs.

[23] It can be discerned from the grounds of judgment of the Court of Appeal that the issue of non-compliance of s 51(1)(b) of the Act was canvassed before the Court of Appeal (see p 21 appeal record Vol I). But the Court of Appeal did not make any order regarding costs to the appellant. The High Court in its order dated 14 February 2004 only gave costs to the assessor Puan Loh Nyet Mee (see p 508 of appeal record Vol 5). In the instant appeal, the award of compensation given by the land administrator on 28 October 2000 was in the sum of RM537,504. The subsequent court award dated 14 February 2004 amounted to RM904,174.92 plus RM20,000. Thus, the court award exceeded the sum awarded by the Land Administrator. Section 51(1)(b) of the Act provides: 'costs shall ordinarily be paid by the Land Administrator, but if the Court is of opinion that the claim of the applicant was so excessive or that he was so negligent in putting his case before the Land Administrator that some deduction from his costs should be made, or that he should pay a part of the Land Administrator's costs, the Court may make such order as to costs as it may think fit'.

[24] Since no order was made by the High Court on costs, we can only come to the conclusion that the learned judge had deemed it fit to do so as he did. We therefore find no reason to interfere with the learned judge's exercise of discretion regarding costs.

[25] My learned brothers have read this judgment in draft and here expressed their agreement to its contents and conclusion.

[26] For the above reasons, this appeal is dismissed with costs.

Appeal dismissed with costs.

Reported by Ashok Kumar